

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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BILL DRAFT 2013-TD-1 [v.8] (09/12)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: Tobacco Products Tax Administration.

(Public)

Sponsors: (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROVIDE UNIFORMITY TO THE ADMINISTRATIVE PROVISIONS OF
THE EXCISE TAXES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 105-113.4A reads as rewritten:

"§ 105-113.4A. Licenses.

(a) General. – To obtain a license required by this Article, an applicant must ~~apply to~~
file an application with the Secretary on a form provided by the Secretary and pay the tax due
for the license. An application must include the applicant's name, address, federal employer
identification number, and any other information required by the Secretary. A license is not
transferable or assignable and must be displayed at the place of business for which it is issued.

(b) Requirements. – An applicant for a license must meet the following requirements:

(1) If the applicant is a corporation, the applicant must either be incorporated in
this State or be authorized to transact business in this State.

(2) If the applicant for a license is a limited liability company, the applicant
must either be organized in this State or be authorized to transact business in
this State.

(3) If the applicant for a license is a limited partnership, the applicant must
either be formed in this State or be authorized to transact business in this
State.

(4) If the applicant for a license is an individual or a general partnership, the
applicant must designate an agent for service of process and give the agent's
name and address.

(c) Denial. – The Secretary may investigate an applicant for a license required under
this Article to determine if the information the applicant submits with the application is
accurate and if the applicant is eligible to be licensed under this Article. The Secretary may
refuse to issue a license to an applicant that has done any of the following:

(1) Submitted false or misleading information on its application.

(2) Had a license issued under this Article cancelled by the Secretary for cause.

(3) Had a tobacco products license or registration issued by another state
cancelled for cause.

(4) Been convicted of fraud or misrepresentation.



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- 1 (5) Been convicted of any other offense that indicates the applicant may not
2 comply with this Article if issued a license.
- 3 (6) Failed to remit payment for a tax debt under this Chapter. The term 'tax debt'
4 has the same meaning as defined in G.S. 105-243.1.
- 5 (7) Failed to file a return due under this Chapter.
- 6 ~~(b)~~(d) Refund. – A refund of a license tax is allowed only when the tax was collected or
7 paid in error. No refund is allowed when a license holder surrenders a license or the Secretary
8 revokes a license.
- 9 ~~(e)~~(e) Duplicate or Amended License. – Upon application to the Secretary, a license
10 holder may obtain without charge ~~one of the following:~~ a duplicate or amended license as
11 provided in this subsection. A duplicate or amended license must state that it is a duplicate or
12 amended license, as appropriate.
- 13 (1) A duplicate license, if the license holder establishes that the original license
14 has been lost, destroyed, or defaced.
- 15 (2) An amended license, if the license holder establishes that the location of the
16 place of business for which the license was issued has changed.
- 17 ~~A duplicate or amended license shall state that it is a duplicate or amended license, as~~
18 ~~appropriate.~~
- 19 (f) Information on License. – The Secretary must include the following information on each
20 license required by this Article:
- 21 (1) The legal name of the license holder.
- 22 (2) The name under which the license holder conducts business.
- 23 (3) The physical address of the place of business of the license holder.
- 24 (4) The account number assigned to the license by the Department.
- 25 (g) Records. – The Secretary must keep a record of the following:
- 26 (1) Applicants for a license under this Article.
- 27 (2) Persons to whom a license has been issued under this Article.
- 28 (3) Persons that hold a current license issued under this Article, by license
29 category.
- 30 (h) Lists. – The Secretary must provide the list required under subsection (g) of this section
31 upon request of a manufacturer that is a license holder under this Article. The list must state the
32 name, account number, and business address of each license holder on the list."

33 **SECTION 2.** G.S. 105-113.4B reads as rewritten:

34 **"§ 105-113.4B. Reasons why the Secretary can cancel a license.**

35 (a) Reasons. – The Secretary may cancel a license issued under this Article upon the
36 written request of the license holder. The Secretary may summarily cancel the license of a
37 license holder when the Secretary finds that the license holder is incurring liability for the tax
38 imposed under this Article after failing to pay a tax when due under this Article. In addition,
39 the Secretary may cancel the license of a license holder that commits one or more of the
40 following acts after holding a hearing on whether the license should be cancelled:

- 41 (1) ~~A violation of this Article.~~ Fails to obtain a license required by this Article.
- 42 (2) Willfully fails to file a return required by this Article.
- 43 (3) Willfully fails to pay a tax when due under this Article.
- 44 (4) Makes a false statement in an application or return required under this
45 Article.
- 46 (5) Fails to keep records as required by this Article.
- 47 (6) Refuses to allow the Secretary or a representative of the Secretary to
48 examine the person's books, accounts, and records concerning tobacco
49 product.
- 50 (7) Fails to disclose the correct amount of tobacco product taxable in this State.

(8) Fails to file a replacement bond or an additional bond as required under this Article.

~~(2)(9) A violation of Violates~~ G.S. 14-401.18.

(b) Procedure. – The Secretary must send a person whose license is summarily cancelled a notice of the cancellation and must give the person an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary must give a person whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing must be sent by registered mail to the last known address of the license holder.

(c) Release of Bond. – When the Secretary cancels a license and the license holder has paid all taxes and penalties due under this Article, the Secretary must take one of the following actions concerning a bond or an irrevocable letter of credit filed by the license holder:

(1) Return an irrevocable letter of credit to the license holder.

(2) Return a bond to the license holder or notify the person liable on the bond and the license holder that the person is released from liability on the bond."

SECTION 4. G.S. 105-113.13 reads as rewritten:

"§ 105-113.13. Secretary may ~~investigate applicant for distributor's license and require a bond.~~

(a) Investigation. ~~—The Secretary may investigate an applicant for a distributor's license to determine if the information the applicant submits with the application is accurate and if the applicant is eligible to be licensed as a distributor. The Secretary may decline to issue a distributor's license to an applicant when the Secretary has reasonable cause to believe any of the following:~~

(1) ~~That the applicant has willfully withheld information requested by the Secretary for the purpose of determining the applicant's eligibility for the license.~~

(2) ~~That information submitted with the application is false or misleading.~~

(3) ~~That the application is not made in good faith.~~

(b) Bond. —The Secretary may require a distributor to furnish a bond in an amount that adequately protects the State from loss if the distributor fails to pay taxes due under this Part. A bond shall be conditioned on compliance with this Part, shall be payable to the State, and shall be in the form required by the Secretary. The Secretary shall set the bond amount based on the anticipated tax liability of the distributor. The Secretary shall periodically review the sufficiency of bonds required of the distributor and shall increase the amount of a required bond if the bond amount no longer covers the anticipated tax liability of the distributor. The Secretary shall decrease the amount of a required bond if the Secretary finds that a lower bond amount will protect the State adequately from loss."

SECTION 5. This act is effective July 1, 2013.